

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LOUIS JAMES THIBODEAUX,

Plaintiff,

v.

DANIEL WHITE, *et al.*,

Defendants.

CASE NO. 3:20-cv-05110-BHS-JRC

ORDER DENYING MOTION TO  
APPOINT COUNSEL

This matter is before the Court on plaintiff's second motion for the appointment of counsel to represent him in this civil rights matter. *See* Dkt. 51. For the reasons discussed below, the Court denies plaintiff's motion.

**BACKGROUND**

Plaintiff, who is incarcerated, initiated this matter in February 2020. *See* Dkt. 1. The Court granted plaintiff permission to proceed *in forma pauperis* and served his complaint. *See* Dkts. 7, 12. The Court also denied plaintiff's first motion for appointment of *pro bono* counsel, which plaintiff filed shortly after initiating the case. Dkt. 31. The denial was without prejudice.

1 The District Court subsequently granted a motion to dismiss filed by certain defendants,  
 2 granting plaintiff leave to amend his claims. Dkt. 50. On September 29, 2020, plaintiff filed the  
 3 pending motion for appointment of counsel, and on October 12, 2020, plaintiff filed his amended  
 4 complaint. *See* Dkt. 58.

5 Defendants have filed their answer to the amended complaint. *See* Dkt. 60. Currently  
 6 pending is plaintiff's request to file an over-length summary judgment motion as well as his  
 7 second motion for the appointment of counsel. *See* Dkt. 61. The deadline to file dispositive  
 8 motions is January 6, 2021. Dkt. 27.

### 9 DISCUSSION

10 Plaintiff requests the appointment of private attorney Don Miller to represent him on the  
 11 basis that plaintiff cannot afford counsel and that he cannot prosecute the case due to his  
 12 incarceration and the complexity of the matter. *See* Dkt. 51, at 1–2.

13 There is no constitutional right to appointed counsel in a § 1983 civil action, and whether  
 14 to appoint counsel is within this Court's discretion. *Storseth v. Spellman*, 654 F.2d 1349, 1353  
 15 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir.  
 16 1995). Appointment of counsel for indigent civil litigants under 28 U.S.C. § 1915(e)(1) requires  
 17 "exceptional circumstances." *See Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing  
 18 former 28 U.S.C. § 1915(d) (1996)), *overruled on other grounds*, 154 F.3d 952 (1998). To  
 19 decide whether exceptional circumstances exist, the Court must evaluate "both 'the likelihood of  
 20 success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of  
 21 the complexity of the legal issues involved.'" *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th  
 22 Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). "Neither of these  
 23 factors is dispositive and both must be viewed together[.]" *Id.*

1       Regarding plaintiff's ability to articulate his claims in light of their complexity, the Court  
2 notes that plaintiff's claims are not overly complex. The operative complaint brings claims  
3 against three defendants, related primarily to alleged failure to provide medical care to plaintiff,  
4 who suffers from a heart condition. *See* Dkt. 58.

5       Moreover, plaintiff's actions in this matter to date have shown that he can adequately  
6 articulate his claims. In response to a show-cause order, plaintiff explained why his three prior  
7 "strikes" did not prevent him from proceeding *in forma pauperis*. *See* Dkt. 7, at 1. And in his  
8 objections to a report and recommendation, plaintiff articulated a plausible theory of liability that  
9 resulted in the District Court granting plaintiff leave to amend his claim. *See* Dkt. 50, at 2.  
10 Plaintiff has filed many motions, including citations to legal authority and cognizable arguments  
11 in support of his claims in this matter. In short, the Court does not find that plaintiff is unable to  
12 articulate his claims *pro se* in light of their complexity, contrary to plaintiff's conclusory  
13 assertions that "since COVID-19" his ability to litigate this case has been impeded.

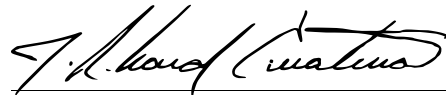
14       Regarding plaintiff's likelihood of success on the merits, the matter is in its early stages.  
15 The amended complaint has yet to survive any meaningful adversarial testing. Plaintiff's claim  
16 that he could not litigate his case if it proceeded to trial is, at this stage, not a persuasive reason to  
17 appoint counsel.

18       Regarding plaintiff's conclusory statement that he will "soon" be transferred to a facility  
19 without law library access, the Court notes that plaintiff acknowledges he will nevertheless be  
20 able to order legal materials. Defendants also assert that plaintiff will have the remedy of a  
21 temporary transfer to use another facility's law library. *See* Dkt. 57. In light of the speculative  
22 nature of plaintiff's claim that he will be transferred and the lack of evidence that such a transfer  
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24

1 would prevent plaintiff from litigating his case, plaintiff has failed to show the extraordinary  
2 circumstances required to justify the appointment of pro bono counsel.

3 For all these reasons, the Court denies the motion to appoint counsel (Dkt. 51) without  
4 prejudice to plaintiff's ability to renew the motion at a later date, upon an appropriate showing.

5 Dated this 4th day of November, 2020.

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10 J. Richard Creatura  
11 United States Magistrate Judge  
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